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CHARGES AND SPECIFICATIONS

WITH

COPY OF ORDERS,

AND

DEFENCE OF ACCUSED,

READ BEFORE A

COURT MARTIAL

CONVENED IN THE CITY OF NEW YORK,

December 10, 1863.

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 21 NASSAU STREET, COR. LIBERTY.

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CHARGES AND SPECIFICATIONS.

CHARGES AND SPECIFICATIONS preferred against *Warren Webster*, Assistant-Surgeon U. S. A.

CHARGE I.—"Disobedience of orders."

Specification—"In this, that he, the said *Warren Webster*, Asst. Surgeon U. S. A., in charge of the McDougall General Hospital, having received an order from Brigadier-General CANBY, commanding the city and harbor of New York, (through Brigadier-General BROWN, commanding Fort Schuyler,) based upon an order from the War Department, (which said order accompanied the order of Brigadier-General CANBY, and was read by Surgeon Webster,) to arrest and send to Fort Columbus, private Philip Fitzsimmons, of Company 'F,' 40th Regt. N. Y. Volunteers, a deserter and an inmate of his Hospital, did refuse to obey the said order. All this at or near Fort Schuyler, New York, between the 10th and 15th November, 1863."

CHARGE II.—"Conduct prejudicial to good order and military discipline."

Specification—In this, that he, the said *Warren Webster*, Assistant-Surgeon U. S. A., in charge of the McDougall General Hospital, having refused to arrest and send to Fort Columbus private Philip Fitzsimmons, of Company 'F,' 40th Regiment N. Y. Volunteers, did then have presented to him by Capt. HANNAN, an order from Brigadier-General BROWN, commanding Fort Schuyler, directing him, the said Captain HANNAN, to repair to the McDougall General Hospital and arrest private Philip Fitzsimmons, of Company 'F,' 40th Regiment, N. Y. Volunteers, did forbid the said Capt. HANNAN to enter any

ward of his hospital, and did also fail to give him any assist ance in carrying out the order of Brigadier-General Brown. All this at or near Fort Schuyler, on or about the 15th November, 1863.

(Signed) Geo. J. Stannard,
Brigadier-General Commanding.

Order Convening Court.

SPECIAL ORDERS, No. 353.

HEAD QUARTERS,
Department of the East,
New York City, December 7th, 1863.

I. A General Court Martial is hereby appointed to meet at New York City on the 10th day of December, 1863, at 10 o'clock A. M., or as soon thereafter as practicable, for the trial of such persons as may be brought before it by authority from these Head Quarters.

Detail for the Court.

1. Major F. F. Dent, 4th U. S. Infantry.
2. Captain William Clinton, 10th U. S. Infantry.
3. Captain David P. Hancock, 7th U. S. Infantry.
4. Captain Wright Rives, additional Aide-de-Camp.
5. Captain Thomas Lord, Jr., Aide-de-Camp.
6. First Lieut. Samuel P. Crowley, 4th U. S. Infantry.
7. First Lieut. Clarence M. Bailey, 6th U. S. Infantry.

Captain Royal T. Frank, 8th U. S. Infantry, Judge Advocate.

No other officers than those named can be assembled without manifest injury to the service.

Should any of the officers named in the detail be unable to attend the Court will nevertheless proceed to and continue the business before it, provided the number present be not less than the minimum prescribed by law.

By command of Major-General Dix.

D. S. Van Buren,
Asst. Adjt. General.

ENDORSEMENTS ON PRIVATE FITZSIMMONS, DESCRIPTIVE ROLL.

Col. J. B. FRY,
Pro. Mar. Gen.,
Washington, D. C.

Please have the within named soldier arrested and returned to his regiment. He was transferred from the 38th Regiment N. Y. V. as absent without leave; since then we have received notice that he deserted from hospital in Washington. He is now at Fort Schuyler, N. Y., and the Surgeon sends daily almost for his descriptive list.

Very respectfully,
Your ob't serv't,
(Signed) T. W. EGAN,
Col. 40th N. Y. V.

WAR DEPARTMENT,
PROVOST MARSHAL-GENERAL'S OFFICE,
Washington, D. C., Nov. 10th, 1863.

Respectfully referred to Brig. Genl. CANBY, Comdg. U. S. Forces, N. Y. H., for his action.

By order of Col. FRY.
(Signed) W. R. PEON,
Capt. U. S. A.

HEAD QUARTERS,
U. S. TROOPS IN CITY AND HARBOR,
New York, Nov. 11th, 1863.

Respectfully referred to Bvt. Brig. Genl. BROWN, who will have this man arrested and sent to F. Columbus, thence to be forwarded to his regiment by first opportunity, accompanied with this paper.

By order Brig. Genl. CANBY.
(Signed) C. T. CHRISTENSEN,
Asst. Adjt. Gen.

HEAD QUARTERS,

FORT SCHUYLER, N. Y. H.

Nov. 12th, 1863.

Respectfully referred to Assistant-Surgeon WEBSTER, U. S. A., in charge McDougall Hospital, who will comply with the above endorsement.

By order,

Bvt. Brig. Genl. BROWN,

(Signed) E. C. WOODRUFF,

Lt. 7th Infantry,

Post Adjt.

McDOUGALL GENERAL HOSPITAL,

Fort Schuyler, Nov. 15, 1863.

Respectfully returned.

Conceiving that the General Hospitals are under the sole direction of the Surgeon-General of the Army, I consider it my duty to obey orders directing the transfer of patients from this Hospital, only when received through the Surgeon General, or through his representative in this Department, the Medical Director.

Respectfully submitted.

(Signed) WARREN WEBSTER.

Asst. Surg. U. S. A.,

In charge.

HEAD-QUARTERS, FORT SCHUYLER,
November 15th, 1863.

Capt. Hannan, officer of the day, will, with a guard of six men, proceed to the hospital, arrest, and bring to this Post, Private Philip Fitzsimmons, of Company "F," 40th Regt., N. Y. Vols.

Capt. Hannan will report to Ass't Surgeon Webster, in charge of the hospital, and request him to turn the man over to his charge. If

Doctor Webster declines or refuses, then the soldier will, if necessary, be forcibly brought.

Capt. Hannan will have no argument or controversy, or receive any papers or protest, but will simply obey these orders.

(Signed) HARVEY BROWN,
Br. Brig. Gen'l.

Proceeded as directed on the within order; saw Dr. Webster; made known the order, a copy of which was requested and given; on requesting information as to where the man could be found, was referred to Hospital Register; referring to which ascertained the man was in ward 1, sect. B; proceeded there with command; while there Medical officer of the day entered, and asked if it was the intention to take the man away. On being answered "Certainly, it was," he left the room. Took the man from thence without opposition, and delivered him in charge of the surgeon at the Post Hospital.

(Signed) J. C. HANNAN,
Capt. 20th N. Y. Battery.
Officer of the Day.

Defence.

The accused having been brought to trial upon the grave charges of "disobedience of orders," and of "conduct prejudicial to good order and military discipline," desires, before the Court proceeds to deliberate and decide upon the question of guilt, to respectfully submit the following suggestions of defence:

It is confidently believed that upon careful reading of the specification to the first charge, this Court will find, in the first place, that the specification cannot, by reason of its want of distinctness and certainty, be made the basis of a verdict, and, in the next place, that if an offence by the accused is alleged therein with sufficient explicitness of fact and circumstance, there is not requisite evidence produced to sustain it.

The specification to the first charge nowhere alleges that General Canby addressed or directed any order to the accused. It nowhere sets forth that the accused received an order directed to him by General Canby.

So far as anything appears in the specification, the order of General Canby might have been directed to any one of a hundred persons, and neither one of them the accused. It is respectfully submitted that before this Court can render a verdict of guilty on the first specification, it must find that the specification sets forth in apt words a lawful order; that such order was addressed to and read by the accused, and the order must be described with perfect precision, and not in vague terms.

The accused, therefore, humbly asks that the specification to the first charge be thrown out by the Court, because it has no allegation of lawfulness, and has not that certainty, particularity, and precision which are required in specifications by the custom and law of the service.

If, however, the Court shall find the specification to the first charge sufficient, in its averments, then the accused suggests that there has been no proof of any order from the Secretary of War, as the lan-

guage of the specification would leave it to be inferred. There has not been and there is no documentary evidence that there has been an order from the War Department, or the Adjutant-General in respect to Fitzsimmons. The statement of the specification and General Brown to the contrary, is error.

The endorsement of Colonel Fry, of November 19th, 1863, was but an endorsement of reference, and contains no word of command, either to General Canby or Assistant-Surgeon Webster, or anybody else. The Adjutant-General of the Army, never, upon the evidence, saw or heard of it.

Again, there is utter absence of any proof that General Canby addressed an order to the accused, or that the accused received and read an order directed to him by General Canby. There is evidence that General Canby addressed an order to General Brown to have Fitzsimmons arrested, and the proof is conclusive that General Brown obeyed that order. So that the only order in the case given by General Canby was obeyed.

As if to put it beyond all controversy that the order of General Canby was directed to General Brown, the last-named officer swears distinctly, in his direct examination, that General Canby's order was directed to him. General Brown's language, as a witness, is as follows:

"On an envelope from Department head-quarters, New York city "and harbor, was an ORDER directing ME to have the man arrested "and sent to Fort Columbus."

Thus every thing in the case—the papers, the official record, the testimony of General Brown himself—all unite to fix indubitably that the only order issued by General Canby was addressed to General Brown, commanding him, and not the accused.

There is testimony that General Brown gave Assistant-Surgeon Webster an order, which was respectfully returned, with reasons; but for that act of the accused, there is no averment in the specification, and thus, no charge. The concluding words of the first specification say explicitly that it was the order of General Canby which was disobeyed, and not the order of General Brown.

It is a familiar rule in Courts Martial that a presumption of innocence attends the accused until it is overthrown by positive evidence, and, applying that principle to the present case, if there be reasonable doubt in the mind of the Court, as to whether the order of General Canby was lawful, or can, in its legal effect be fairly considered an order to Assistant-Surgeon Webster, when it makes no allusion to him, or the McDougall General Hospital under his charge, then the accused is entitled to the benefit of the doubt, and for that reason, with the others assigned, there must be, on the specification of the first charge, a verdict of NOT PROVEN.

And if the specification to the first charge be not proved directly against the accused, then, since (according to General Order No. 11 of February 5, 1862) a person can only be guilty of a charge by being guilty of the matter stated in the specifications of the charge, there must be verdict of NOT GUILTY, on the first charge in the present case.

If, however, the Court shall be of opinion that the specification to the first charge is sufficient in its averments, and that all its material allegations are proven, then the accused humbly desires to be heard upon the larger question of disobedience of orders.

And, first of all, he prays that whatever he may suggest may not, under the circumstances, seem to any member of the Court to be impertinent or unbecoming. The accused does not fail to realize how humble is his rank in the military service. Besides that, he appreciates the fact that he belongs to a corps which, under existing regulations, cannot be represented in a Court convened to try, and it may be, punish one of its members. And yet he feels that this is a Court in whose presence and whose decrees an officer, even as humble as the accused, will have the same exact treatment and justice as would the highest officer in lineal rank in the army.

The accused recognizes, to the fullest extent, the vital necessity of military unity and subordination, in order to secure the perfection of military operation. He appreciates that, in an army or a department, there can be but one will, and that will supreme within its sphere. He knows that an officer is bound to obey the last order not

manifestly illegal, which is directed to him by the superior appointed over him, and leave consequences to take care of themselves. But none of these admitted axioms in military life he submits, with great deference, determine to what officers it is given to discharge or transfer patients from a General Hospital.

It is important to bear in mind that nothing, in the present case, touches or questions the power or authority of Major-General Dix, the Department Commander, to order a medical officer in charge of a General Hospital to deliver up, for transfer, any patients under his charge. The accused never has hesitated to obey the orders of the Department Commander in respect to the management of the hospital; because, among other things, he considers himself bound to assume, that every order issued from that source has the concurrence of his superior medical authority, which is the Medical Director on the Staff of the Department Commander. The order now in controversy, however, did not emanate from the Adjutant General of the Army, or Major-General Dix. And the question now raised, in respect to control of General Hospisals, is not an issue between the medical department and line officers; but is an enquiry whether the Military Commander in the city of New York, or the Commander of the Post at Fort Schuyler, can, like the Department Commander, exercise control over patients in General Hospitals.

Neither is this a question of the authority of a Post Commander over his own Post Hospital and Post Surgeon; but, as just stated, it relates solely, in the opinion of the accused, to the amount of jurisdiction which subordinate Military Commanders have, independent of the Department Commander, and the Surgeon-General, over General Hospitals.

The present case finds that Fitzsimmons was a deserter from the 40th Regiment of New York Volunteers; that he, in some way, found himself in General Hospital on Governor's Island; that, on the 15th of October, 1863, he was, through Medical Director McDougall, transferred as a patient to McDougall General Hospital; that November 1st, 1863, a severe surgical operation was performed on him; that eleven days thereafter General Brown ordered the accused

to arrest the man and send him to Fort Columbus; that, at that time, the man was, by the surgical operation, confined to his ward, his wound dressed twice each day, and his arrest and transfer dangerous to his life; that the surgeon in charge of the ward reported him unable to be moved, except as a patient; that the accused endorsed on the back of General Brown's order the following:

"Conceiving that the General Hospitals are under the sole direction of the Surgeon-General of the Army, I consider it my duty to obey orders directing the transfer of patients from this hospital only when received through the Surgeon-General, or through his representative in this department, the Medical Director."

That General Brown thereupon directed his officer of the day to remove the man by force from the General Hospital, which was done; that the man was taken out, without medical examination, by the dersons removing him, into the place or condition of his wound, and in a cold rain-storm, made to walk a long distance, and in the end sent to Fort Columbus, where it was found that he was not fit or able to be returned to his regiment.

The accused, it is alleged, offended by respectfully representing to General Brown the opinion of the accused that General Hospitals are under the direction of the Surgeon-General, and therefore, that orders, directing transfer of patients, must come through that officer, or his representative in the department, the Medical Director.

Is punishment to be inflicted for making such representation? Did not General Orders, Special Orders, and the custom of the Medical Department warrant such an interpretation? General Orders Nos. 36, of 1862, and 308, of 1863, it will be remembered, start with the unconditional statement that General Hospitals are under the direction of the Surgeon-General! What can those orders mean if they do not bear out the construction given them by the accused? The Surgeon-General, in an endorsement of August 13, 1863, directed to Medical Director McDougall, reiterates General Order No. 36, and says, that the Secretary of War had decided in a case coming up from Iowa, in conformity with this General Order, and against the authority of Brigadier-General Roberts, commanding the district of

Iowa, to interfere with General Hospitals. Not only that, but Major-General Halleck, in an endorsement commenting on the conduct of General Brown, in relation to McDougall Hospital, and produced here in Court, maintained that military commanders, subordinate, like General Brown, to the Department Commander, had no authority to interfere in the management of General Hospitals.

So, also, it has been proved here that Medical Director McDougall decided, in a case of conflict with General Brown, that the McDougall General Hospital was self-sustaining, and not connected with the Post at Fort Schuyler. How, if the Court please, could a subordinate medical officer, like the accused, surrounded with such precedents and orders, but think an order like that of General Brown manifestly contrary to General Orders and special decisions, and so unlawful? At least, will not this condition of rules and regulations prevent the Court from finding that the accused acted either wilfully or with wrong intent?

The accused did not suppose that any thing contained in General Order No. 36, of 7th April, 1862, in relation to the duties of the Military Commander in the City of New York, conflicted with this theory of the exclusive supremacy of the Surgeon General and the Department Commander in General Hospitals. In the first place, General Order No. 36 must, he assumed, be so interpreted as to give force to all its requirements, and harmony of one part with another; that it must be read and construed as a whole. Its key-note and its starting point are the declaration that "General Hospitals are under the direction of the Surgeon-General."

Then, the second, third, fourth, and fifth clauses go on to provide, after again declaring that *all* General Hospitals in a city are entrusted to the chief medical officer, how disabled men in hospitals are to be discharged from service by Military Commanders, not as General Brown in his evidence would seem to indicate, upon his own will, but only on certificate of a Medical Officer. Then the sixth clause defines that "the Military Commander's duties in reference to all troops and enlisted men, who happen to come within the limits of his command, will be precisely those of a commanding officer of a

Military Post." This sixth section harmonizes with the first section by interpreting the words "all troops and enlisted men who happen to come within the limits of his command," to mean "all troops and enlisted men," except those in General Hospitals, which, by a previous clause, are placed under sole charge of the Surgeon-General. So also the requirements of the seventh section, that Military Commanders collect "stragglers," and send them forward to their regiments, does not touch Fitzsimmons' case, for he was not a "straggler," the accused believed, within the meaning of General Order No. 36. He was first a patient in the General Hospital on Governor's Island, was next regularly transferred by name to McDougall General Hospital, by order of the Medical Director; was borne on the muster-roll of the latter hospital and reported to the Adjutant-General, and while in McDougall General Hospital was not only under its guards, but was enveloped by the sentinels of General Brown, who surrounded the peninsula on which that hospital stands.

The ninth clause of General Order No. 36 provides that the Military Commander cannot order patients in a General Hospital to join their regiments, until the Chief Medical Officer shall report them "fit."

The accused found in the clause of General Order No 51, of May 10, 1862, which directs "Commanders of Departments to designate some officer *in each city or town where there is a General Hospital*, to perform the functions assigned to Military Commanders in General Orders No. 36," what appeared to him confirmation of the interpretation that the Surgeon-General was to control the admission, management, treatment, and time of transfer and discharge of patients therefrom, and the Military Commander was only made responsible for their custody and transportation when fit to be "transferred," or for the authentication of their discharges when pronounced unfit for service by the Medical Officer.

And finally, as if to put to rest all doubt about the meaning of Order No. 36, the Secretary of War himself, in the Iowa case, had put upon it a construction, which the accused assumed was conclusive

everywhere, and which he ventures now to hold up as a shield against any threatened punishment.

In view of such orders and precedents, the accused implores the Court to bear in mind that, even upon the testimony of the prosecution, this is not a case of disobediece of an order where there was no reasonable ground to suppose the order was erroneously issued; and also to bear in mind what character for respectful, prompt obedience to superiors, General Brown and Surgeons Abadie and Sloan—officers of long service in the regular army—give the accused. General Brown testifies that he has "found the accused courteous and respectful," and not "captious, or disposed to give annoyance." The testimony of Surgeon Abadie was to the same purport. There are no presumptions, then, that the accused intended or wished to give annoyance to General Brown in the present case. So far from that, the accused solemnly affirms, that up to the occurrences now on trial, from no medical officer in this Department, or elsewhere, did he ever hear the suggestion or intimation that the Surgeon-General had not the entire charge of General Hospitals. Medical officers with whom he has conversed, including those high and low in rank, have agreed in opinion that according to the directions of the War Department no military officer in the Departmeat of the East, lower in command than Major-General Dix, could, without intervention of the Medical Director, remove patients from General Hospitals. The accused did not douht that such was the law and rule of the service. He found in General Orders No. 65, of June 12th, 1862, that "*each Medical Director* must, under the orders of his Department Commander, regulate the distribution of the sick and wounded to the hospitals within the Military Department to which he belongs." The General Order seemed to make it clear that no one but Major-General Dix and Medical Director McDougall could regulate the distribution or tranfer of patients. Again, in the same General Order, the accused found provision that officers whose duty it is to forward detachments of men from hospitals, "will take care that no men except those provided with written passes from their hospital surgeon, or the Medical Director, shall be allowed to go."

So, General Order No. 78, of July 14th, 1862, appeared to the accused to confirm the construction that a patient could not be ordered out of McDougall General Hospital, without concurrence of the Medical Director, by an authority less than that of Major-General Dix, whose order would be assumed to be by concurrence of the Medical Director, who is a member of the staff. That order (No. 78) says, that while in General Hospitals, "men will be under the fostering care of the Government while unfit for duty; will be in position to be promptly discharged, if proper, and, being always under military control, will be returned to their regiments *as soon as they are able to resume their duties.*" And by General Order No. 36, the Chief Medical Director was the person to determine when men were "able to resume their duties."

In these allusions and comments on General Orders, the accused has no wish to influence exposition or construction of existing orders in respect to General Hospitals. He only desires humbly to lay before this Court the reasons which constrained him him to make the endorsement he did on General Brown's order, to the end that the Court may not only judge of their correctness, but may consider whether or not the accused acted in good faith, and as an honorable officer.

The Act of Congress and General Order No. 308, in evidence, recite that: "The Medical Inspector-General has, under the direction of the Surgeon-General, the supervision of ALL that relates to the sanitary condition of the army, whether in transports, quarters or camps; the hygiene, police, discipline, and efficiency of the field and general hospitals; and the assignment of duties to medical inspectors." This General Order also directs surgeons in charge of general hospitals "to yield *prompt compliance* with the instructions they may receive from medical inspectors on duty in the army, department, or district in which they are serving, on ALL matters relating to the sanitary condition of the troops, and of the hygiene, police, discipline, and efficiency of hospitals."

Can it be denied that the propriety of removing from hospital a soldier with a wound as dangerous to life as that described by Sur-

geon Abadie, is " matter relating to the sanitary condition of troops" in hospital? And if not, then this order commands " prompt compliance with the instructions" in relation to such removal which surgeons in charge may receive from the Medical Department? Did Congress or General Orders intend to place general hospitals under a double head of medical officers, and officers not medical? It cannot be denied that the Medical Department, like every other staff department, must be and is, secondary and subordinate to the line of the army which does the fighting; but still that admission does not necessarily decide whether it has not been determined by lawful authority that the Medical Bureau shall have charge and control over men in general hospitals, who cannot fight and are removed from the theatre of active operations in the field. It appeared to the accused impossible that such general, all-embracing authority over general hospitals could be given to the Medical Department; that surgeons in charge of hospitals could be required to obey the Surgeon-General in respect to inmates, and yet that a subordinate commander in the line, with no claim to professional knowledge, had legal power to interfere and arrest the system which might be prescribed by competent medical authority. The Court will recall the clear testimony of Surgeon Sloan on this point. It seemed certain to the accused that if General Brown had authority, independent of Major-General Dix, or the Medical Director, to order one man out of the hospital who was there as a patient, then he could order one hundred; and, in the end could take away every male attendant and nurse, competent to administer to the wants of the suffering; and thus not only impair but *destroy* the efficiency and usefulness of the institution.

When the accused received the order of General Brown, unaccompanied by endorsement of Major-General Dix, it was his intention to detain the man in his ward in custody, report his condition to the Medical Director, and ask his direction. His reply, when received, would have been scrupulously followed. If it be said that report of the condition of the man should have been made directly to General Brown, and not through the Medical Director, the accused replies that, upon such orders, he has never made reports to General

Brown, and never was instructed that it was his duty or that it was regular to do so. General Brown states in his testimony, that—

"Dr. Webster makes no reports to me, and no reports of or from the hospital are made to the post;" and he adds, "I do not conceive I have anything to do with the reception or dismissal of the patients or their treatment."

But the accused did respectfully inform General Brown that the man was a patient in the General Hospital, and that, in the opinion of the former, the man should not be given up except on permission of the Medical Director. The endorsement of the accused, on General Brown's order, covered both those points. And, if it were not so, of what avail would have been any report to General Brown, who has testified that he considered his orders from General Canby to be "imperative," and thus to afford no opportunity for discretion. If discretion could be exercised in favor of a patient, it could have been on information that the man was a patient. But when General Brown gave the order to Captain Hannan to proceed with a squad of six soldiers and arrest the wounded man; there was no opportunity to state his condition, because the former directed the latter to "receive no papers or protest, but to simply obey the orders" to arrest and take away the man.

The accused solemnly reiterates that, at the time he made the endorsement in question on the order of General Brown, he was inspired by no thought, purpose, or wish but to obey implicitly the commands of the superiors set over him in respect to the management of the General Hospital placed in his charge. He was moved by no spirit of disrespect to General Brown. An order of arrest and transportation of a patient, unapproved by the Medical Director, had never before come under his observation, either in the McDougall Hospital, or in the Douglas Hospital, in Washington, of which latter institution the accused was for a long time in charge. His previous conviction of what the rules of the service required, were strengthened on careful inspection of all the endorsements in the present case, by finding that the letters of Colonels Egan and Fry, and the order of General Canby to General Brown, assumed the man to be at the post of Fort Schuyler, and

not in the General Hospital. The experience of the accused had been, as Assistant Medical Director Sloan testified his own to be, that soldiers in the McDougall General Hospital were *uniformly* described, in orders and official papers, as being in that hospital, and not merely at Fort Schuyler. If there was error of judgment and opinion in all this, it was an honest error, unaccompanied by any wilful or wrong intent. The accused believed that if Colonel Fry or General Canby had supposed the man to be in McDougall General Hospital, they would have transmitted the recommendation or order, through the Medical Director, to the surgeon in charge, and not have issued the order to General Brown. He was convinced that if, with a patient having a wound as serious as what Surgeon Abadie and Dr. Caldwell have described Fitzsimmons' to be, he had, without a protest, permitted the arrest and transfer, unbeknown to Major-General Dix, or the Medical Director, he would have received a rebuke, if nothing more, from his medical superiors.

In respect to the documents (marked M, N, and O, respectively,) which General Brown volunteered to put as testimony in the case, as if to make apparent the true legal relation existing in November last between the McDougall General Hospital and the General Commanding in the City and Harbor of New York, the accused only desires to say that they have no possible bearing on the issue on trial. The first two (marked M and N), were written previously to the passage of the Act of Congress of April 16th, 1862, which effected such radical changes in the Medical Department, and are both prior to the issue of all General Orders put in evidence here. As to the remaining document (marked O), written one month after the passage of the aforementioned Act, but ten days before the date of General Order No. 36, of April 7, 1862, it only directs conference with General Brown in respect to the appropriation of Bedloe's Island, and a place in New Jersey, by the Medical Department.

Thus much has the accused deemed it proper to say in exposition of the grounds of his action. It now remains with the Court to find:

1. Whether the endorsement by the accused, on the order of General Brown, was a military offence.

2. If an offence, whether it has been set forth in proper military form, in the specification to the first charge.

3. What punishment shall be inflicted if the first two points are found against the accused?

In regard to the last inquiry, the first two having been subjects of consideration, the accused, in mitigation of sentence, can only point to the record of his humble service, as it has been entered on the records of this trial. Others have succeeded better and done more, but none have tried harder to discharge all the obligations of duty. As Post-Surgeon at Fort Larned, in 1860; as Assistant-Surgeon in charge of Douglas Hospital in Washington; as Medical Inspector of the Army of the Potomac, by order of the General Commanding; as Assistant-Surgeon in charge of the McDougall Hospital, the accused has, under the orders of his superiors, striven to his utmost to promote the well-being of the sick and wounded, and the efficiency of the Medical Department. Errors of judgment on his part, there are doubtless many which he has committed, but errors of intention or wilful neglect, none.

To the specification of the second charge the accused, on arraignment, not wishing to even seem to deny the commission of any act done by him, pleaded guilty, although the inexactness of a portion of the specification, in respect to failing to give any assistance, is made apparent by the return of Capt. Hannan. The accused, however, cannot deny that he forbade Captain Hannan to enter the wards of the hospital. He was inspired thereto in part by the reasons before assigned in his comments upon the first charge, but chiefly by the following report, already in evidence, and received from A. A. Surgeon Caldwell, who was the medical officer immediately in charge of Fitzsimmons:

McDougal General Hospital,
Fort Schuyler, N. Y., Nov. 15th, 1863.

Warren Webster,
Assistant-Surgeon, U. S. A.,
Surgeon in Charge:

Sir,—I have the honor to report that Philip Fitzsimmons, private

of 40th N. Y. V., formerly of 38th N. Y. Vols., in Ward 1, Section B, under my charge, is suffering from a gun-shot wound of the left shoulder, which required a surgical operation for the removal of a portion of the clavicle, on the 1st of Nov., 1863. The wound is now granulating favorably ; but I do not consider him in a condition to be transferred from this hospital at present in any other condition than as a patient. His wound requires to be dressed twice a day.

I have also the honor to request that, in consequence of the critical condition of John Fallon, private of the 42d N. Y. Vols., Co. F, all visitors may be excluded until I again report on his condition, and that no occurrence likely to occasion this patient any excitement may be permitted in this Ward during this day.

All of which is respectfully submitted by,

(Signed) Jno. J. Caldwell,
A. A. Surgeon U. S. A.,
In charge of 1 and 2, Section B.

The accused assumed that the hospital was, in circumstances like these, sufficiently under his charge to exclude any officer who, like Capt. Hannan, was not of the Medical Department. He did not suppose it was prejudicial to good order and military discipline to thus comply with the request of the surgeon in charge of a patient, in order to save life.

If his language would not be liable to misinterpretation he would say, that it is not the accused who, in respect to Fitzsimmons, has done acts "prejudicial to good order and military discipline."

The Court cannot fail to remember the earnestness with which Surgeon Sloan, Assistant Medical Director, condemned interference with General Hospitals by subordinate commanders. He said :

"It had been the source of a great deal of trouble and controversy. It has sometimes counteracted regulations adopted by the Medical Department. All the General Hospitals in this department are governed by certain regulations and instructions. Interference with those regulations, without the knowledge of the Medical Director, has caused a great deal of trouble and annoyance."

How important it is to preserve rules and regulations unimpaired in the McDougall General Hospital will be appreciated by perception of the fact, that this institution has a capacity of two thousand beds and a corresponding staff of assistant-surgeons, hospital stewards, female nurses, and members of the Invalid Corps. To regulate so large a command of sick and wounded, it is easy to see that system, and subordination to one will, are vital.

The surgeon in charge is held responsible not only for the public property there in use, and for making the institution, so far as may be, pecuniarily self-sustaining, but for the good and judicious treatment of each of the inmates. Is not every thing which interrupts the regular order prescribed for such an hospital "prejudicial to good order and military discipline?"

That the accused maintained good order and good treatment there, is not denied; and he invokes to his aid the evidence of his character as an officer, given by those who testified to it, and to the condition and management of the hospital under his charge. If the record discloses to the Court that the accused has been generally neglectful of his duties; unmindful of the sick and wounded entrusted to his care; or disrespectful, in any sense, to the superiors appointed over him, then let adverse judgment be pronounced. But if, on the contrary, he has earned a character as an officer worthy of approbation, then the accused asks that it may, so far as justice permits, enter into, and, with the proof in respect to general and special orders, control the finding of this Court.

(Signed)

WARREN WEBSTER,
Assistant-Surgeon U. S. Army.

APPENDIX.

HEADQUARTERS DEPARTMENT OF THE EAST,

New York City, January 14th, 1864.

GENERAL ORDERS, No. 2.

I. Before a General Court Martial which convened at New York City, by virtue of Special Orders, No. 118, from these Headquarters, of December 7th, 1863, and of which Major F. T. Dent, 4th U. S. Infantry, is President, was arraigned and tried, Assistant-Surgeon *Warren Webster*, U. S. A., upon the following charges and specifications, viz. :

Charge 1st.

"*Disobedience of orders.*"

Specification.—"In this, that he, the said *Warren Webster*, Assistant Surgeon U. S. A., in charge of the McDougal General Hospital, having received an order from Brig.-Genl. Canby, commanding the City and Harbor of New York (through Brig.-Genl. Brown, commanding Fort Schuyler), based upon an order from the War Department (which said order accompanied the order of Brig.-Genl. Canby, and was read by Surgeon Webster), to arrest and send to Fort Columbus, Private *Phillip Fitzsimmons*,

of Co. 'F,' 40th Regt. of N. Y. Volunteers, a deserter, and an inmate of his Hospital, did refuse to obey the said order."

All this at or near Fort Schuyler, New York, between the 10th and 15th of November, 1863.

Charge 2d.

"*Conduct Prejudicial to Good Order and Military Discipline.*"

Specification.—"In this, that he, the said *Warren Webster*, Assistant Surgeon U. S. A., in charge of the McDougal General Hospital, having refused to arrest and send to Fort Columbus, Private *Phillip Fitzsimmons*, of Co. 'F,' 40th N. Y. Volunteers, did then have presented to him, by Captain Hannam, an order from Brig.-Genl. Brown, commanding Fort Schuyler, directing him, the said Capt. Hannam, to repair to the McDougal General Hospital, and arrest Private *Phillip Fitzsimmons*, of Co. 'F,' 40th N. Y. Vols., did forbid the said Captain Hannam to enter any Ward of his Hospital, and did also fail to give him any assistance in carrying out the orders of Brig.-Genl. Brown."

All this at or near Fort Schuyler, on or about the 15th November, 1863.

To which charges and specifications the accused pleaded as follows:

To the specification to the 1st Charge, "Not Guilty."

To the first charge, "Not Guilty."

To the specification to the second charge, "Guilty."

To the second charge, "Not Guilty."

Finding.

The Court, having maturely considered the evidence adduced, find the accused, Assistant-Surgeon *Warren Webster*, U. S. A., as follows:

Of the specification to the first charge, "Guilty."

Of the first charge, "Guilty."

Of the specification to the second charge, "Guilty."

Of the second charge, "Guilty."

Sentence.

And the Court does therefore sentence him, Assistant-Surgeon *Warren Webster*, U. S. A., "to be confined to the limits of his Post for six months, and to be reprimanded in General Orders, by the General commanding the Department."

II. The Major-General commanding approves the proceedings of the Court, as well as the sentence that Assistant-Surgeon *Warren Webster* be reprimanded in General Orders, and be confined to the limits of the Post for six months. In consideration of his high standing, and his reputation for subordination anterior to the events which led to his trial, the Court recommends the remission of the sentence. While acknowledging, as the Major-General cheerfully does, the professional merits of Assistant-Surgeon *Webster*, he cannot permit so marked a breach of discipline as that which was clearly proved before the Court to go unpunished. Believing, with the Court, that the offence was founded in some degree on a misconception of duty, which, however, would have been more pardonable in an officer of less intelligence, the sentence of confinement to the limits of the Post at which Assistant-Surgeon *Webster* is employed, is reduced from six months to sixty days.

III. The General Court Martial, of which Major F. T. Dent, 4th U. S. Infantry, is President, is dissolved.

By Command of Major-General Dix,

D. T. VAN BUREN,

Assistant Adjutant-General.

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